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Joint written statement* submitted by Franciscans International, a non-governmental organization in general consultative status, Edmund Rice International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Plight of Children and Women Seeking Asylum in Australia

Franciscans International, Edmund Rice International, Destination Justice, and ChilOut (Coalition) welcomes the adoption of the Reports of the UPR of Australia and Nauru and would like to draw the attention to the issue of children and women seeking asylum in Australia.

CURRENT SITUATION

Australia's practice of mandatorily and indefinitely detaining asylum seekers, including women and children, amounts to a serious violation of Australia's international human rights obligations. Australia is the only country in the world to detain children arriving in its territory via a maritime vessel and without a visa, as a first option. In addition, Australia denies these unauthorised maritime arrivals the right to challenge the legality of their detention and subjects them to inhumane conditions of deprivation of liberty.

Mainland Immigration Detention Centers (IDCs) and Australian-run offshore detention facilities in Nauru and Papua New Guinea raise serious concerns for the welfare and safety of asylum seekers, particularly women and children, especially in light of the evidence of physical and sexual abuse occurring in certain facilities.

The damaging impact of detention on the immediate and long-term-health of children and women is well known and has been strongly denounced by the Australian Human Rights Commission (AHRC), UN bodies, independent reviews, and members of the medical profession.

Statistics

According to official statistics in 2015, 91 children are currently held in IDCs in Australia and 68 in the Nauru Regional Processing Centre (RPC); 212 women are held in mainland IDCs and 79 are at the Nauru RPC. The average length of time that asylum seekers spend in immigration detention facilities is 445 days. 23.2% of asylum seekers currently in detention have been there for more than 730 days.

Between January 2013 and March 2014 the Department of Immigration and Border Protection (DIBP) reported:

- 57 serious assaults;
- 233 assaults involving children;
- 33 incidents of reported sexual assault (the majority involving children);
- 183 incidents of voluntary starvation (with a further 27 involving children).

The Australian Senate's 2015 Inquiry into the Nauru RPC revealed that between February 2014 and April 2015, there were:

- 253 self-harm incidents;
- 67 child abuse incidents;
- 33 incidents of sexual assault/rape;
- 724 complaints of ill-treatment against detention centre staff.

Conditions of Detention

Based on visits and first-hand information obtained by UNHCR, the AHRC, the Australian Senate and ChilOut, our Coalition supports the conclusion that the conditions in which asylum seekers are generally kept are inappropriate and are especially unsuitable for women and children.

Recent investigations into IDCs and Nauru RPC have stated that the deprivation of liberty at these centres fall below international standards in many areas, especially in relation to women and children. These include:

- October 2013. UNHCR - Sending children to offshore immigration detention is inappropriate and may be in breach of the Convention on the Rights of the Child.
- December 2014: UNCAT - Australia's indefinite detention of asylum seekers, including children, is concerning and the conditions in RPCs create "serious physical and mental pain and suffering" for them.
- November 2014. AHRC - "Children on Nauru are suffering from extreme levels of physical, emotional, psychological and developmental distress; "Australia's "mandatory and prolonged immigration detention of children is in clear violation of international human rights law."
- February 2015. AHRC, "Moss Review" - There are many credible allegations of indecent assault, sexual harassment, physical assault, sexual exploitation, rape, and overall issues involving the privacy and personal safety of detainees, in Nauru RPC.
- March 2015. UN SR on Torture - Australia's failure to end the detention of children, to provide adequate detention conditions and to stop violence and tensions at the Nauru RPC violates the CAT.
- August 2015. Australian Parliamentary Senate Committee - Nauru RPC is not a safe environment for asylum seekers, particularly for women, children and other vulnerable persons.
- February 2016. AHRC - The 69 children detained at Wickham Point Detention Centre who spent time in detention in Nauru are among the most traumatised ever seen by specialists; all children should be immediately removed from the facility.

Children

A) Sexual and physical abuses and other ill treatments perpetrated on children are confirmed by the above mentioned official DIBP statistics.
B) Children are referred to by their boat ID numbers and so they refer to themselves and each other; the possibility to contact family overseas are limited and parents progressively lose agency in their role as most decisions relating to the routine and care for the child are determined by detention facility service providers.
C) Community-standard healthcare is not consistently available; access to dental care, child psychiatry, peri-natal psychiatry, midwifery, obstetrics, speech therapists, nutritionists and paediatricians is limited.
D) Recreational ad hoc facilities and activities, consistent, curriculum-based pre-school education programs, and appropriate classroom areas and supplies lack. At Australian mainland sites, such as Wickham Point Detention Centre, children can join local public schools with an escort; this process is confusing and upsetting. Children detained in Nauru RPC are often bullied and harassed by Nauruan classmates.

Reports and observations regarding the impact of detention on children are corroborated by letters and other forms of communication that ChilOut has with children who are in mainland detention and in offshore RPCs. For example, children say "I am always sad because I have stayed such a long time in detention" and "I am sick of getting up every morning and seeing three rows of fences in front of me like I am a criminal." One child recently told ChilOut "The hardest part of being in detention is that I feel I am dying every second of my life in here. I don't feel alive."

Women

Various reports from service providers at the Nauru RPC and Australian media detail the inhumane conditions in which women are forced to live, in fear for their safety. Information concerning allegations of sexual harassment and assault providing evidence that protection, care, and responses from Australian and Nauruan authorities are inadequate are numerous.

In December 2013 following a threat of sexual assault against a female asylum seeker inside the RPC the DIBP required the woman to remain in the centre despite significant risk to her safety. In November 2013 a single mother claiming to be sexually harassed by a group of men was unable to move to alternative sleeping quarters away the alleged perpetrators because she had not raised the concerns on enough occasions to justify being moved. Not only protection

for women against sexual abuse on Nauru is inadequate; reports of sexual assaults on women detained there follow one another and the consequences of these violence perpetrated against them are appalling.

Abuses are likely under-reported and that atmosphere of secrecy and lack of access to support for asylum seekers creates a dangerous likelihood that abuse will continue or even intensify. Additionally, the alleged perpetrators of violence are rarely identified or charged by the competent authorities.

In July 2015 a 23 year old female Somali refugee known as "Abyan" said she was raped by an unknown man whilst outside the Nauru RPC. Her alleged rape resulted in a pregnancy. Abyan expressed her wish to terminate the pregnancy but was unable to do so on Nauru due to the fact that abortion is not legal there. Abyan was returned to Australia for medical treatment and a possible abortion, but in an unclear and highly politicised series of events Abyan was returned to Nauru after supposedly deciding against an abortion, although Abyan's ability to make free choices during this period is contested.

In Australian mainland detention centres there are also some concerns for the safety of female detainees. In May 2015 at Wickham Point Detention Centre, one of Australia's mainland centres, a male guard was dismissed following allegations he attempted to coerce female detainees into having sex with him.

The final report from the Australian Senate Inquiry noted that the "inability for vulnerable women and children to be removed from unsafe situations is clearly at odds with best practice that would apply in an Australian domestic context." This submission argues furthermore that such unsafe conditions are at odds with Australia's international human rights obligations to protect the rights of woman and children.

INTERNATIONAL LAW COMPLIANCE

Notwithstanding the recent unsuccessful challenge to the Government's transfer arrangements with Nauru in the High Court of Australia, as a matter of international law the physical transfer of asylum-seekers from Australia to Nauru does not extinguish Australia's legal responsibility for the protection of asylum seekers, refugees or stateless persons affected by the transfer arrangements.

In regard to children and women, it is important to underline that Australia is a party to several fundamental human rights instruments including the ICCPR and the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Australia's policy of mandatory and indefinite detention, among others:

1. Breaches Articles 9 and 14 of the UDHR, providing that "Everyone has the right to seek and enjoy in other countries asylum from persecution" and that "No one shall be subjected to arbitrary arrest, detention and exile."
2. Breaches Article 9 ICCPR as applied to immigration control procedures by the UN Human Rights Committee as well as Article 10 ICCPR
3. Breaches the 'last resort' principle of Article 37(b), (d) CRC.
4. Violates Art. 3(1) CRC according to which all actions concerning children must be in the best interests of the child.
5. Violates Article 37(c) CRC according to which children have to be treated with humanity and respect for their inherent-dignity.
6. Disregards Article 19 CRC.
7. Fails to provide children an adequate education, as per Article 28(1) CRC.
8. Does not foster the health, dignity and self-respect of women and children, as per Articles 39 CRC, 3 CEDAW and joint CEDAW - CRC Recommendation.
9. Violates Article 12 CEDAW.

RECOMMENDATIONS

Legislation:

1. Repeal mandatory detention and transfer to offshore RPCs for asylum seekers arriving by boat;
2. Introduce the minimum amendments to the Migration Act:
    A. Minimum standards for immigration detention of children and women;
    B. Detention for children must be used as last resort, should not exceed seven days, and should be clearly framed;
    C. Children should be released from detention with their families;
    D. Limits for immigration detention for adults must be reinstated.
3. Establish an effective and judicial review for immigration detention;
4. Repeal the whistleblower prohibitions in the Border Force Act 2015;
5. Amend legislation so that the Minister for Immigration and Border Protection is no longer the guardian of unaccompanied children and appoint an independent alternative guardian for children;
6. Introduce a mandatory reporting system for instances of child and women abuse or neglect occurring in detention.

Policy and implementation:

1. Stop refoulement of asylum-seekers and refugees;
2. Utilise alternatives to immigration detention effectively and consider additional alternatives for children and their families who arrive by boat and for women who are pregnant or nursing;
3. Process asylum claims more expeditiously;
4. Ensure adequate and accessible legal aid and services for asylum seekers;
5. Issue directives to DIBP and its contractors to restore language and practices that humanise asylum seekers and restore their dignity and agency;
6. Appoint an independent body of medical and legal experts to assess the welfare of children and women in detention and to respond to complaints and allegations of harm;
7. Provide the DIBP's contractors training and establish performance reviews to assess compliance with standards for the fair treatment of woman and children in detention.

Nauru RPC:

1. Immediately close the RPC in Nauru;
2. Release women, children and their families detained in Nauru, transfer them to Australia, and ensure that their rights are enforced and protected;
3. Cease the practice of transferring women and children and their families to the Nauru RPC;
4. Properly investigate and prosecute allegations of sexual and other forms of assault against children and women.

Destination Justice and ChillOut (Coalition), NGOs without consultative status, also share the views expressed in this statement.